TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 143.

THE MUNICIPALITY OF PONCE, APPELLANT,

vs.

THE ROMAN CATHOLIC APOSTOLIC CHURCH IN PORTO RICO.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

FILED OCTOBER 25, 1906.

(20,437.)

(20,437.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 143.

THE MUNICIPALITY OF PONCE, APPELLANT,

vs.

THE ROMAN CATHOLIC APOSTOLIC CHURCH IN PORTO RICO.

APPEAL FROM THE SUPREME COURT OF PORTO RICO.

INDEX.

	Original.	Print.
Caption	*a*	1
Complaint	1	1
Order filing complaint, &c	17	10
Statement as to notice	17	10
Demurrer	18	11
Order overruling demurrer	20	12
Motion for judgment by default	21	13
Order granting motion for judgment	22	14
Judgment	22	14
Assignment of errors	24	16
Petition for appeal	26	16
Order allowing appeal	26	17
Notice of appeal	27	17
Affidavit of value	27	18
Bond	28	18
Præcipe for transcript	30	20
Certificate of stenographer	31	20
Clerk's certificate	32	20
Citation	33	21
Affidavit of service of citation	34	22

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 3, 1907.

a Supreme Court of Porto Rico, Office of the Secretary.

Transcript of Record in the Case of—

THE ROMAN CATHOLIC APOSTOLIC CHURCH IN PORTO RICO, Plaintiff,

v.

THE MUNICIPALITY OF PONCE, PORTO RICO, Defendant.

1 To the Honorable Supreme Court:

Mr. Juan Hernandez Lopez, attorney and representative of the Rt. Rev. Bishop of this Diocese of Porto Rico, in his capacity as such, and therefore being duly qualified with all of the powers corresponding to him as Prelate of the Diocese of the Roman Catholic Apostolic Church in this Island, and in conformity with the authority conferred by the law of the Legislatiove Assembly of Porto Rico on the 10th of March of the present year, appears before this Supreme Court, and as may seem most proper states: That acting on the instructions received from my client, I file this suit to obtain from the Municipality of the City of Ponce, the acknowledgment of the full ownership by the Roman Catholic Apostolic Church, to the churches in the said municipality, in this Island, dedicated and consecrated to Catholic worship, basing the same on the following statement of facts and of law.

Facts.

1st. The Roman Catholic Apostolic Church is at the present time, and has for many years, been in the legitimate, quiet and peaceful possession of the following churches and temples, dedicated and consecrated to Catholic worship.

1. A masonry building, dedicated as a catholic church, in the City of Ponce; occupying a superficial area of sixty-five meters and thirty-five centimeters long by thirty-seven meters and forty-eight centimeters wide, including the court, the building measuring forty-eight meters long by twenty-four meters and sixty-seven centimeters wide. It is bounded on the north by the "Plaza Principal;" on the south by the "Plaza de las Delicias"; on the east by the fire department, which is situated on the same lot or court of the
2 church, and on the west by the said "Plaza Principal."

2. A parochial church situated in the center of the "Plaza de la Playa" of Ponce; it measures forty-two meters and twenty centimeters in length by nineteen meters and forty centimeters wide, including the court; the building measuring eighteen meters and thirty centimeters long by sixteen meters and twenty centimeters wide. It is bounded on all four sides by the "Plaza Principal."

2nd. These temples or churches were built with the funds of the municipality within which they are situated, and since then they have been maintained by donations and alms from the parishioners;

and with respect to them their possession by the Catholic Church runs for many years, coming from the time when the building of the same was completed. And none of the buildings of those temples, since they were built, have been used for any other purpose than Catholic worship. Thus it all appears, and more fully and in detail, in the respective records which we have at hand, relating to each of those churches, which we only mention now, without prejudice to our right to present them as evidence, at the proper time on the trial.

3rd. In the month of June 1827, during the time of the Governor of this Island, Don Simon de la Torre, this officer forwarded to the Commandant of Engineers, for his report on the same, an acta forwarded to the said Governor by the Royal Alcalde of Ponce, together with the memoranda in regard to the same, for the rebuilding of the Church of that town, which papers were on file in the Office of the Secretary of State, and from that report it appears that the board called the Visiting Board resolved to advise the Governor that it being in keeping with the decorum of a rich and Christian city like Ponce, to have a Temple which would show that
3 such conditions existed, covered with an arched roof, and not a roof of "teja-mani," as had been theretofore proposed and accepted for reasons of economy by the Governor, the improvement was now indicated, and the first authority of the Island seeing that the interested parties themselves asked for a more expensive building, which worked no hardship on the poor residents, made no objection to approving the resolution taken by the Board, which opposed in nowise the beneficial outlook of the Government, but that as the Board talked of a cost of ten thousand pesos for the rebuilding, and there were no plans or appropriations, it should be borne in mind that for any building with an arched roof solidity in the walls was necessary, for which reason it was recommended that intelligent men be used, appointing to proceed to the rebuilding of the Church, a trustee and wardens, who would notify the Government of all action taken in the matter of the building, as well as the Board, of the subjects appointed as wardens, who under the orders of the Alcalde would look out for economy and other matters pertaining to the building. An estimate was made, and the Board of Visitors being called together in the residence of the Bishop, it was of the opinion that the work should be given to Don Pascual Bártoli, who had neither presented himself to do the work, nor gave bond, for which reason in the meeting of the Board of Visitors the Priest of Ponce advised the members that at Hormigueros there was a builder who could take charge of the work. It does not appear that he commenced the building, but it does appear that in the year thirty amendments were made to the estimate. In the year thirty-two the commandant of engineers lamented to the Governor General that there was no activity on the part of the local authorities and
4 the Board of Visitors, and in view of a complaint made by the priest Don Juan Nepomuceno Gimenez it was proposed that the Board of Visitors should meet; that the same should look for an intelligent builder to direct the work on the building, that edicts be

published, and in the meantime, that the Board should get together the necessary funds, empowering it to name or appoint wardens and trustees, as was ordered on the 22nd of June 1827. In the year 34 another estimate was made, and new plans, the Board of Visitors being charged to greater activity. Those in charge of building and material of the Church on the 1st of April of the following year, made another estimate amounting to $22,636 setting forth that the funds which they counted upon were funds belonging to the building, other amounts which would be used for the same purpose, and further, a voluntary subscription, insinuating that the debt would be covered by the amount of a legacy, and what was collected by subscriptions, and requested the Government to order the Teniente a Guerra to call the Visiting Board together and the residents in order that they might advance the sums necessary to continue the work as a loan to be repaid. On folio 43 of the record there appears a certificate by which the Secretary of the city council affirms under date of March 1837 that among the receipts of the account of public funds rendered by the trustees, Don Olegario Gonzalez, it is ordered that amounts be paid from a tax levied, as a reimbursement to the Church, as was ordered by the city council.

4. In the account which the Commissioner Don Geronimo Rabasa presented, it appears that he took charge of the amounts delivered by the priest Don Juan Nepomuceno Giminez, for..... $1,923.38
From the same Priest for Charity Legacies..... 1,720.64
From donations 978.25

5 Among them of the Excellent Archdeacon Don José Gutierrez del Arroyo, $500, of the Priest $300 and of other residents. The accounts of the Commissioner approved in the year 37.

5. The construction of the building was suspended for lack of funds, and the Alcalde insinuated to the Governor that the income of the Church since the year 34 being in the hands of the Priest, it was necessary that the same should be delivered, as also the three hundred dollars intended for the use of la Hermita de San Antonio, left by will by Don José de los Santos Rodriguez. For that reason the Governor appointed the Vicar general in order that he might adopt the proper measures. The Vicar general requested reports from the Priest, and the latter stated that he had delivered upon his order, upon the beginning of the work, *all the funds which the parish had, and several legacies*, and he was convinced that with the products of the Church, the temple would not be completed, on account of the increased expenses calculated by the builder, but that it should be borne in mind that General la Torre, in the Board of Visitors, ordered that the funds on hand in the parish not being sufficient for the work, that an assessment be made, which was being collected, but had not been completed, the commissioners remaining with only the dependence of the Governor, and what might be collected added to the existing funds, and the three hundred dollars of the Hermita, if it should be ordered that it be delivered, something

could be done. By a communication dated 6th of June 1838, the General Lopez Baños authorized the use of funds designed for the construction of the house of the King, *which would be reimbursed.*

6. The Captain General ordered the Priest to pay to Don Geronimo Rabasa his account, placing at the disposition of the City Council whatever there might be on hand, in order to gradually repay what the corporation had advanced to the Church and that the latter owned. 6

7. In the year 41 it was ordered that the funds of the Parish be used to pay for ordinary and extraordinary matters of religious service, and the preservation of the temple, and that the balance be paid to Don Geronimo Rabasa, and if there was not sufficient, to pay with the funds of the house of the King. The Parish set forth that there was a balance of $193. Various estimates were made, and on the 25th of May of the year 47 the Governor advised the Priest that the collection of what was owing to the Parish had been ordered. It appears, also, from a communication from the Mayordomo for the work, that there were debts in favor and some cash on hand.

8. It should be made clear that the court of accounts opposed some of the amendments of the trustee, and ordered in the year 43 that the funds set apart for the building of the Church be accounted for, and the amounts taken be reimbursed, and in view of which the Alcalde explained: *that the funds counted upon to rebuild the Church in the years* 1828 *to* 34 *were called funds for the building of the Church, several legacies, donations by subscription and an assessment which was made and collected in the years* 1835 *to* 1836, and those sums not being sufficient to carry out the project, it was necessary to use for the rebuilding of the Church, the amounts which existed in the fund of the house of the King, all with the approval of the Government on the 29th of March, 1841. That amount has not been returned, because the church fund being reduced to the building fund, the latter was barely sufficient to cover the ordinary and extraordinary expenses of worship and the preservation of the Temple, as was reminded by the Priest when he ordered the Commissioner Don Geronimo Rabasa to be paid. 7

9. In succeeding years the estimates for buildings were continued, the Priest Don Angel Fondá, at his request, being charged with the same, and the last was made in the year 72 on the application of the Father José David, amounting to $1.794 pesetas, authorizing the City Council to settle the matter for the account of the administration.

10. As is seen, the City Council, if it intervened in the repairing of the Church of Ponce, it has been as an auxiliary to the Visiting Board, or at most, as creditor, if it proves that it is of the Church, because the first rebuilding in the year 27 originated in a resolution of the Visiting Board; it took an active part in the building; it was authorized to appoint wardens and commissioners, and furthermore, according to the admission of the Alcaldía, and orders of the Superior Government then, the first amounts taken in for the rebuilding of the Temple, were funds called funds for the building of

the Church, legacies and donations, and it was ordered that the Priest pay amounts of money, and that the funds advanced by the City Council should be *in the nature of loans to be refunded.*

11. On the 27th of March, 1876, several ladies of this place, among them Doña Leonor Fajardo, Doña Olimpia P. de Corchado and Doña Aurora Marin, who composed the commission of ladies to get up a bazaar the proceeds of which were to be devoted to the construction of a Catholic Temple at the Playa in Ponce, called upon the City Council, stating that Doña Francisca Paz de Cabrera had in her possession various objects which were left over from another bazaar given for the Polytechnic Institute, which idea was given up, and the request to the City Council was denied. Later other gentlemen applied to the said City Council setting forth that permission having been granted by the Bishop to erect a Catholic
8 Temple at the Playa, it would be convenient to open the streets leading to the same, and the City Council resolved to appoint a commission to report on the matter, which was done.

12. Later a Board of Directors to take charge of the administration and construction of said Temple applied for permission to begin the work and invited the City Council to attend at the laying of the corner stone. That same directorate asked the said corporation for a sum as indemnity for opening three streets, and the said city council refused to incur any unnecessary expense, sending up to the Government the history of the matter, who determined that expropriation proceedings should be begun. The Board of Directors again made the same request, and the City Council again ratified its refusal, it appearing that on the 27th day of April, 1877, the corporation was advised with an order from the Governor General to the effect that a report be made in regard to a request directed to him by the Board of Directors, to which the City Council stated that the directorate had not complied with the orders of the Governor, the latter resolving that the permission for the erection of the Temple is within the jurisdiction of the City Council, or more properly speaking, that the directorate should comply with the order of August 2nd if it was desired to secure the expropriation of private property or occupation by the public domain, and that in any other case it must obtain permission from the City Council. In the year 78 Don Gregorio Gonzalez complained to the Governor that the City Council had not indemnified him for the value of a lot, and a report being requested from the City Council it set forth that he should recover from the Board of Directors of the Catholic Temple, and the Governor decided that in view of the fact that the matter
9 under consideration was a question between private parties, that they resort to the courts.

13. The City Council of the City of Ponce has included in the inventory of its property the Parochial Church described in the first allegation of the complaint, on the ground that from time immemorial the said Church has been included in that inventory. We do not know the exact date on which that inventory may have been made, but according to the information we have it only runs back a few years from this date.

14. After the change of sovereignty, the City Council of Ponce attempted to record in the Registry of Property the possession of the said Church, and the lot upon which the same is situated, but in view of the fact that this was contrary to the provisions of paragraph 2 of article 25 of the Regulations for the application of the mortgage law, which excludes the inscription of public Temples used for Catholic worship, the Registrar of Property of the District of Ponce refused to make the inscription, unless a decision be obtained from the Secretary of Justice, to authorize the same, notwithstanding the prohibitive provisions of the Regulations. The Secretary of Justice rendered the decision applied for repealing, without being a legislative authority, the said article 25 of the Regulations, in its second paragraph.

15. In order that the inscription of possession of the said Church and lot be made in favor of the City Council of Ponce, the Alcalde improperly following the provisions of article 31 of the Regulations, issued by himself and before himself, an order, in which, attributing the possession of the said property to the said municipal corporation, it was ordered that the same be inscribed in the Registry of Property. And this took place unbeknown to the Catholic Church, without it being cited to appear and be heard, and overlooking the evident fact that the real party in possession is the Catholic Church, since it occupies, and has occupied said Temple since it was built, and perpetually consecrated to Catholic worship, and for such object it had been built exclusively.

Legal Points.

1. From the foregoing history set forth, it clearly appears that if the City intervened in any way in repairing the Parish Church of Ponce, it was in the way of assistance to the Board of Visitors; and it also appears from the foregoing history of the case that the said City Council is not and never has been the owner of the Church of the Playa. And even supposing that the two Churches had been constructed with municipal funds, they would not on that account not be the property of the Catholic Church, as is shown in the considerations hereinafter set forth.

2. It must be taken into account, that the possession which the Catholic Church has had, and still has, of these temples dates back many years, and has been uninterrupted since their completion or reparation; and that none of these temples, from the time when they were built, have been devoted to anything else but Catholic worship.

3. It must also be taken into consideration that when the change of sovereignty took place on the 18th of October, 1898, that is when this Island was occupied by the Army of the United States, and when the Treaty of Paris was concluded under date of the 11th of April, 1899, which ended the war between the United States and Spain, the Roman Apostolic Catholic Church was, as it is today, and has always been without interruption, in the quiet and peaceful possession of the temples referred to, which have been and

still are, constantly devoted by said Church to Catholic worship, in a regular and permanent manner.

11 4. It must likewise be taken into account that neither the city-councils nor the Spanish State, nor its representatives in this Island, ever directly or indirectly, molested, troubles or disturbed the Catholic Church in the quiet and legal possession of the said temples or churches.

5. The inscriptions of possession are understood to be without prejudice to a third party who has a better title, and do not prejudge or decide the questions that may arise in regard to ownership, and even in regard to the right of possession.

6. According to section 33 of the Mortgage Law, the inscription does not confirm the acts or contracts which are void according to the laws. And the act of a town-council is null and void which attributes to itself the ownership and possession of a church that is dedicated to Catholic worship, and issues an order to record said possession in its favor for the sole reason that said church is included in the inventory of its property made up by the interested party itself, improperly applying section 31 of the Regulations, which were not intended for such cases as this, since section 21 is prior to the same, which in its second paragraph excludes from inscription public temples which are devoted to Catholic worship. And the proceedings of the city-council is void also because the said resolution of the Secretary of Justice, contrary to the provisions of the second paragraph of Section 25, had no legal effect to exempt (the parties concerned) from the fulfillment of the same; for, although said resolution be understood as having been adopted by way of construction of the law, this power pertains exclusively to the Courts of Justice.

7. The Roman Catholic Apostolic Church in Porto Rico, as in all other Spanish possessions, besides being especially considered

12 under the public and administrative law as a power united with the State for the general purposes common to both, was considered from the point of view of the civil law, as a moral and juridical person who was capable of having rights and obligations, and who, therefore, was capable of acquiring and possessing all kinds of property, in the manner and by the means established by the civil law; and said Church had this personality not only in itself, that is to say, in its general and absolute entity, but also in all and each of its representatives, institutions and communities. This civil juridical personality is proven by the historical fact that the Roman Catholic Apostolic Church has at all times had and possessed property of all classes; it appears expressly in the provisions of the Spanish civil laws which were continuously in force, and it is especially defined in the Spanish Civil Code, which was in force in this Island at the time when the change of sovereignty took place, and in whose sections 35, 36 and 37 juridical personalities, their capacity and corporations, are defined; and section 38 reads as follows: "Juridical persons may acquire and possess estates of any kind, and contract obligations, and prosecute civil or criminal actions, in accordance with the rules and laws of the Constitution." The Church shall be governed in this respect, by the agreements made between

both powers, and the institutions of learning and of charity by the provisions of the special laws. That is to say, that according to Section 38 of the Spanish Civil Code, the Treaties and Concordats made between the Holy See and the Kings of Spain constitute the civil law, by virtue of which the Church could exercise and make good its property rights.

8. At the conclusion of the Treaty of Paris, which put an end to the war between the United States and Spain, the juridical
13 and civil personality of the Apostolic Roman Catholic Church in Porto Rico was that determined by the said Section 38 of the Civil Code in force at that time, that is to say, the juridical and civil personality which had been established, recognized and sanctioned by the Concordats made between the Holy See and the Kings of Spain.

9th. In accordance with the Concordats, especially that of 1851, and the Royal Decree of the 20th of April 1858, the State assumed the obligation of supporting and paying the expenses of the material and personnel of worship and clergy, and of the building and reparation of churches and temples; but there were many instances in which, by reason of the intimate and close official relations which existed between the Church and the State and public corporations of all kinds, and by reason also of the deep religious sentiment by which the authorities and the popular corporations were animated, the municipalities and the inhabitants of the same, defrayed the expenses of construction and reparation of their churches and temples; and these expenses constituted a perpetual and liberal donation to the Church; first, because when these expenses were included in the respective municipal budgets, it was done for an exclusive and fixed purpose, and without reservation or limitation of any kind; second, because such was always the intention and will of the donors; and third, because it does not appear in any way that the Church, upon receiving the said temples, and dedicating the same, in perpetuity to Catholic worship, in the presence and with the consent of the donors, did so with reservations or limitations of any kind. On the contrary, the said delivery and consecration were understood by both parties to have been effected in an absolute manner, and for a perpetual purpose.

10. The juridical and civil personality of the Roman Apos-
14 tolic Catholic Church, such as it was constituted at the time when the change of sovereignty took place, was supported and protected by the said Treaty of Paris, section 8 of which reads as follows: "In conformity with the provisions of sections I, II, and III of this Treaty, Spain relinquishes in Cuba, and cedes in Porto Rico and other Islands in the West Indies, in the Island of Guam, and in the Philippine Archipelago, all the buildings, wharves, barracks, forts, structures, public highways, and other immovable property which in conformity with law belong to the public domain, and as such belong to the crown of Spain." "And it is hereby declared that the relinquishment of cession, as the case may be, to which the preceding paragraph refers, cannot in any respect impair the property or rights which by law belong to the peaceful possession of prop-

erty of all kinds, of provinces, municipalities, public or private establishments, ecclesiastical or civic bodies, or any other associations, having legal capacity to acquire and possess property in the aforesaid territories renounced or ceded, or of private individuals, of whatsoever nationality such individuals may be."

11. If the intent and purpose of the building and repairing of said temples is taken into consideration, it is clearly seen that it was the deliberate and manifest purpose (of the donors) that the Church should acquire and utilize the said temples and churches in a perpetual and irrevocable manner.

12. If it is desired to consider the form of the delivery, there is no evidence, and it does not appear anywhere, how said delivery was made, nor can it be proven that the municipality of Ponce and its inhabitants, upon delivering the said temples to the Catholic Church, did so under any condition or reservation of rights in their favor.

15 13. The Catholic Church is the possessor of the said churches, and therefore, it is proper to apply to said possession the provisions of Sections 434 and 436 of the Spanish Civil Code, which was in force when the change of sovereignty took place, and Sections 437 and 438 of the present Civil Code, which provide: "That good faith is always presumed, and that any person averring bad faith on the part of a possessor, is bound to prove the same." And that; "It is presumed that possession is continued under the same understanding by which it was acquired, until the contrary be proven."

14. This Supreme Court is the competent Court for the trial of this suit, in accordance with the provisions of the law of the Legislative Assembly of the 10th of March last, hereinbefore referred to.

15. According to the provisions of paragraph 3 of Section 459 of the Law of Civil Procedure, proceedings to secure a conciliation are not necessary in those cases in which the public treasury, municipalities, charitable institutions, and in general, civil corporations of a public character are plaintiffs or defendants in the suit.

Therefore, and exercising the actions derived from the foregoing facts and legal grounds,

I request the court, to be pleased to consider this suit as having been brought against the City council of the city and Municipal District of Ponce; to admit the same; to order that the defendant be summoned in the person of the Mayor of the said City and Municipal district, by an order issued in due time, and containing the necessary insertions (of the complaint) so that said defendant may answer the same within the time allowed by law; and after the proceedings necessary in the case, to render a final judgment, de-

16 claring that the Roman Catholic Apostolic Church in Porto Rico has, and to the same belongs, the full and legitimate ownership and possession of the churches and temples enumerated in this complaint, that is to say, of the buildings of said churches and temples, and of the lots on which they are situated, without any reservation or limitation, and for all particular purposes of the said Catholic Church; declaring also, as a consequence, the nullity of the

inscriptions of possession or of ownership which concerning the said properties may have been made in the Register of Property, in favor of the defendant, and which must be canceled; ordering, also, that the city council against which this action is brought, perform through its legitimate representative the legal act of recognition of the full and legitimate ownership and possession referred to, if such recognition should be necessary in order that said ownership and possession be recorded in favor of the plaintiff, in the respective Register of Property; and imposing upon the defendant the costs of this suit. This is Justice which I formally request.

Additional Prayer.—In order to prove the facts which I have stated, it is proper, and

I pray that it may please the Court to hear the evidence in this suit, at the proper time and in the form provided by law. Justice as before.

San Juan, Porto Rico, June 8th, 1904.

(Signed) DR. JUAN HERNANDEZ LOPEZ.

"Filed in my office on this 11*th* day of June, 1904.

(Signed) A. F. CASTRO,

Secretary Supreme Court of Porto Rico."

Porto Rico, 24th of June, 1904. Chief Justice Quiñones, and Associate Justices Hernandez, Figueras and MacLeary.

17 Considered as filed together with the documents and copy which accompany the same, the attorney Don Juan Hernandez Lopez, being considered as a party in representation of the Rev. Prelate of the Diocese of the Roman Apostolic Catholic Church; in regard to the principal prayer the complaint is admitted, and the case will be heard and determined in accordance with the procedure in civil actions; the same is forwarded by means of the proper communication, for his study and information, to the Municipal Judge of Ponce, to the City Council and municipality of the said city, in order that the same may file an answer thereto within the term, not to be extended, of twenty days, within which time its appearance shall be entered in the proceedings, and the copy hereto attached being delivered at the time of service; in regard to the further prayer, the same will be acted upon at the proper time; file and number the case, and Associate Justice Hernandez is designated as Judge of Instruction.

It was so ordered by the gentlemen of the Court, and the Chief Justice affixes his rubric; to which I certify.

(Signed) A. F. CASTRO.

On the 24th of June this case was filed under number six: I certify.

(Signed) CASTRO.

On the 25th of June I notified Juan Hernandez Lopez of the foregoing order with a copy and reading, and he signs, and I certify.

(Signed) JUAN HERNANDEZ LOPEZ.

the twenty-seventh of June the letter ordered in the foregoing for the notification of the City Council of Ponce was issued, hich I certify.

(Signed) CASTRO.

In the Supreme Court of Porto Rico.

THE ROMAN CATHOLIC CHURCH, Plaintiff,
vs.
THE MUNICIPALITY OF PONCE, PORTO RICO, Defendant.

Demurrer.

ow comes the Municipality of Ponce, Porto Rico, by its Attor-, Horton & Cornwell, and Ulpiano Colóm, and defends the g and injury, etc., and says: That the declaration or petition said, and matters therein contained in manner and form as the are above stated and set forth, are not sufficient in law for the Roman Catholic Church to have its aforesaid action thereof ntained against the Municipality of Ponce, Porto Rico, and that said Municipality of Ponce, Porto Rico, is not under any neces- nor in any wise bound by the law of the land to answer the ; wherefore, for want of a sufficient declaration in this behalf, Municipality of Ponce, Porto Rico, prays judgment and that said Roman Catholic Church may be barred from having its said action thereof maintained against the Municipality of ce, Porto Rico: and for causes of demurrer in law, the said icipality of Ponce, Porto Rico, according to the form of the ute in such cases made and provided, sets down and shows to Court here the causes following, that is to say:

First.

hat this Court has no original jurisdiction of the subject matter nd parties to this suit as a *nisi prius* or trial court.

Second.

hat the Plaintiff has not legal capacity to sue, for the reason that s not a juridical person, nor a legal entity, and is without legal rporation.

Third.

hat there is a misjoinder of causes of action in that there are two arate and distinct alleged causes of action stated.

Fourth.

That the Plaintiff does not state facts sufficient to constitute any cause of action, and that it admits that the property question was constructed by funds of the Municip*al*ity of Ponce, rto Rico, and the legal title now rests in the Municipality of nce, Porto Rico.

Fifth.

For that the petition or declaration shows upon its face that it is not an ordinary and concise statement of the facts with a prayer for relief, and that the same is wholly or in part unintelligible, and that there are divers blank spaces left in each and every count of said declaration, there are divers omissions of material statements and averments, and that the said declaration or petition is drawn in a negligent*ly* and untechnical manner.

Sixth.

For that the petition or declaration shows upon its face that the alleged causes of action are each and every one barred by the Statute of Limitations.

Seventh.

For that the petition or declartion is prolix, rambling, ambiguous, unintelligible and uncertain.

Eighth.

For that the petition or declaration is argumentative.

Ninth.

For that the petition or declaration is full of conclusions at law, quotations of law and arguments of law.

Tenth.

That the petition or declaration shows upon its face that this suit is brought by and in the name of an alleged person claiming to hold an alleged office, position or title as Bishop of the Diocese of Porto Rico, while the petition or declaration and the prayer for relief in the same shows a suit by an alleged organization or association designated as the Roman Catholic Church, showing clearly a suit by the alleged Bishop praying for relief for another separate and distinct alleged personage designated in the petition or declaration as the Roman Catholic Church.

Eleventh.

That the petition or declaration wholly fails to show that the alleged Bishop of the Diocese has the necessary authority or right to file this suit or represent the alleged association or organization designated as the Roman Catholic Church, in any manner whatsoever, in this suit.

(Signed) HORTON & CORNWELL.
R. M. COLOM.

Manuel V. Domenech makes solemn oath and says, that he is Mayor of the Municipality of Ponce, and that the foregoing demurrer is not interposed for delay, and that the same is true in point of fact.

(Signed) MANUEL V. DOMENECH.

ıbscribed and sworn to before me this eleventh day of November,
4.

(Signed) M. ALBERTO SALICRUP,
[NOTARY'S SEAL.] *Notary Public.*

hereby certify that in my opinion the foregoing demurrer is
founded in point of law.

(Signed) F. L. CORNWELL,
Of Counsel for Defendant.

In the Supreme Court of Porto Rico.

No. 6.

THE ROMAN CATHOLIC CHURCH IN PORTO RICO, Plaintiff,
vs.
THE CITY COUNCIL OF THE CITY OF PONCE, Defendant.

Resolution.

SAN JUAN, PORTO RICO, *June 10th*, 1905.

In this case the various demurrers filed by the defendant have been duly considered by this Supreme Court, and the ıe are overruled.

t was so decided by the gentlemen of the Court, and the Chief tice affixes his rubric; to which I certify.

(Signed) P. S. EUGENIO ALVAREZ.

In the Supreme Court of Porto Rico.

No. 6.

THE ROMAN CATHOLIC CHURCH IN PORTO RICO, Plaintiff,
vs.
THE CITY COUNCIL OF PONCE, Defendant.

In Regard to Property and Possession of Certain Buildings.

M. James H. Blenk, Bishop of the Roman Catholic Apostolic urch in Porto Rico, through his attorney, Juan Hernandez Lopez, pears before this Honorable Court and says: That the complaint ving been filed in this action, and after the demurrers to the same l been overruled, the said complaint was forwarded to the defend- in order that an answer might be filed thereto within the term thirty days, which were granted for the purpose.

The said term of thirty days having expired and the said answer the complaint not having been filed by the defendant, the said fendant was accused of being in default by the plaintiff herein, d the corresponding entry of such default was made by the Secre-

tary of this Honorable Court, in conformity with the provisions of paragraph 2 of section 194 of the Code of Civil Procedure.

The said law provides that after the entry of default of the defendant, the plaintiff may apply at the first or any of the
22 subsequent sessions of the Court for the relief demanded in the complaint.

And therefore, and in accordance with the said authority conferred by the law, I pray this Honorable Court to render its final judgment, declaring the action to be good, in accordance with the contents of the prayer set out in the bill of complaint filed in this Court on the 8th day of June 1904, and impose the costs against the defendant.

San Juan, Porto Rico, October 8th, 1905.

(Signed) JUAN HERNANDEZ LOPEZ,
Counsel for the Plaintiff.

In the Supreme Court of Porto Rico.

No. 6.

THE ROMAN CATHOLIC CHURCH IN PORTO RICO, Demandante,
vs.
THE CITY COUNCIL OF PONCE, Demandado.

Resolution.

SAN JUAN, PORTO RICO, *October 10th*, 1905.

Granted as requested. It was so accorded by the Court, and the Chief Justice affixes his rubric; to which I certify.

(Signed) A. F. CASTRO.

In the Supreme Court of Porto Rico.

No. 6.

THE ROMAN CATHOLIC CHURCH IN PORTO RICO, Plaintiff,
vs.
THE MUNICIPALITY OF PONCE, Defendant.

Original Jurisdiction.

Judgment.

SAN JUAN, PORTO RICO, 21 *May*, 1906.

23 This cause having heretofore been regularly called for decision upon the demurrer filed by the defendant to the plaintiff's complaint, and the same having been duly considered and overruled, and leave granted the defendant to file an answer within the time prescribed by law, and the said defendant having

failed to file such answer, and judgment by default having been duly rendered therein; all of which proceedings appear in the record of this court; it is accordingly now hereby ordered, adjudged and decreed that the plaintiff have judgment against the defendant as prayed for in the complaint, and that all diverse claims whatsoever of the defendant and of all persons claiming or to claim the property herein described, or any part thereof, under said defendant, are hereby ordered, adjudged and decreed to be invalid and groundless, null and void; and that the plaintiff be and hereby is declared adjudged and decreed to be the sole true and lawful owner of the houses and lands hereinafter described as set forth in the complaint, and every part and parcel thereof, and that the title of the plaintiff thereto is adjudged and decreed to be quieted against any and all claims and demands of the defendant; and the said defendant is hereby perpetually enjoined and estopped from setting up any claim or title whatever thereto, or to any part thereof.

Said premises are bounded and described as follows:

"The first is a building constructed of brick and masonry, situated in the city of Ponce, on an area of sixty five meters and eight centimeters wide, including the walk, the building measuring forty-eight meters long by twenty-four meters and sixty-seven centimeters wide; bounded on the north by the Plaza Principal; on the south by the Plaza de las Delicias; on the east by the fire department, which is situated on the same lot or yard as the Church; on the west by the said Plaza Principal.

The second is another building situated in the center of the Plaza de la Playa de Ponce; the superficial area whereof measures forty-two meters and twenty centimeters long, by nineteen meters
24 and forty centimeters wide, including the walk, the building measuring eighteen meters and thirty centimeters long by sixteen meters and twenty centimeters wide. It is bounded on all four sides by the Plaza de la Playa."

The inscription of possession heretofore made in the Registry of Property at Ponce, concerning the above said properties, in favor of the defendant the municipality of Ponce, is hereby cancelled and declared to be utterly null and void, and the proper endorsement must be made upon the said Registry indicating the same.

It is hereby further ordered, adjudged and decreed that the plaintiff do have and recover all costs of this suit, which are hereby taxed at $ —— dollars, and that the defendant be ordered to pay the same within thirty days from this date.

Thus we pronounce, command and sign.

(Signed) JOSÉ S. QUIÑONES.
JOSÉ C. HERNANDEZ.
JOSÉ MARIA FIGUERAS.
J. H. MacLEARY.
ADOLPH G. WOLF.

I, Lic. Don Antonio F. Castro, Secretary of the Supreme Court of Justice of Porto Rico:

Certify: that the foregoing judgment agrees with the original thereof; and in order that the same may be attached to the record herein, I issue the present copy in San Juan Porto Rico on the 21st day of May, 1906.

(Signed) A. F. CASTRO,
Secretary of the Supreme Court.

In the Supreme Court of Porto Rico.

THE ROMAN CATHOLIC CHURCH IN PORTO RICO, Plaintiff,
vs.
THE CITY COUNCIL OF PONCE, Defendant.

Assignment of Errors.

25 The defendant prays an appeal from the final judgment of this Court to the Supreme Court of the United States and assigns for error:

First. That the Supreme Court of Porto Rico was without jurisdiction of the subject matter in controversy.

Second. That said Court was without jurisdiction of the parties.

Third. That the said Court erred in overruling the general demurrer and the eleven special grounds of demurrer interposed by the defendant to the Complaint filed in said cause.

Fourth. That the said Court erred in rendering judgment against defendant in said cause, upon the pleadings in said cause, and that the judgment is contrary to the law and the facts as stated in the pleadings in said cause.

Fifth. That the Court erred in entering judgment without taking evidence and proofs or setting the cause upon the docket for hearing.

Sixth. That the said Court erred in rendering judgment in favor of the plaintiff and against the defendant in said cause.

Wherefore, the said defendant prays the judgment of the Supreme Court of Porto Rico may be reversed.

(Signed) HORTON & CORNWELL,
Solicitors for the Defendant.

In the Supreme Court of Porto Rico.

THE ROMAN CATHOLIC APOSTOLIC CHURCH IN PORTO RICO, Plaintiff,
vs.
THE MUNICIPALITY OF PONCE, Defendant.

26 *Petition for Appeal to the Supreme Court of the United States.*

The Municipality of Ponce conceiving itself aggrieved by the final judgment made and entered on the 23rd day of May, 1906, in the

above entitled cause, does hereby appeal from said final judgment to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith and prays that this appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said final judgment was made, duly authenticated, may be sent to the Supreme Court of the United States, and that all further proceedings in this Court be suspended and stayed until the final decision of said appeal by the Supreme Court of the United States.

San Juan, Porto Rico, 28th of May, 1906.

(Signed) HORTON & CORNWELL,
Solicitors for Defendant.

In the Supreme Court of Porto Rico.

No. 6.

THE ROMAN CATHOLIC APOSTOLIC CHURCH IN PORTO RICO,
Plaintiff,
vs.
THE MUNICIPALITY OF PONCE, Defendant.

Original Jurisdiction.

Order.

SAN JUAN, PORTO RICO, *28th of May*, 1906.

It is ordered hereby that an appeal to the Supreme Court of the United States from the judgment rendered in this cause be and the same is hereby allowed.

It is further ordered that the bond for said appeal be for the sum of one thousand dollars, and the term of ninety days is hereby
27 allowed for the preparation and translation of the record to be forwarded to the Supreme Court of the United States.

(Signed) JOSÉ S. QUIÑONES,
Chief Justice.

In the Supreme Court of Porto Rico.

THE ROMAN CATHOLIC APOSTOLIC CHURCH IN PORTO RICO,
Plaintiff,
vs.
THE MUNICIPALITY OF PONCE, Defendant.

Notice of Appeal.

To the Roman Catholic Apostolic Church in Porto Rico, and to Juan Hernandez Lopez, its representative:

By the present you are notified that the Municipality of Ponce intends, and hereby does appeal from the final judgment of the

Supreme Court of Porto Rico rendered in the above mentioned cause on the 23rd day of May, 1906, to the Supreme Court of the

(Signed) HORTON & CORNWELL,
Solicitors for the Municipality of Ponce.

I acknowledge the receipt of a copy of the foregoing notice of appeal this 29th day of May, 1906.

(Signed) JUAN HERNANDEZ LOPEZ.

In the Supreme Court of Porto Rico.

THE ROMAN CATHOLIC APOSTOLIC CHURCH IN PORTO RICO,
Plaintiff,
versus
THE MUNICIPALITY OF PONCE, Defendant.

Affidavit.

Luis P. Valdivieso, being duly sworn and under oath de-
28 poses and says:

That he is the Mayor of the City of Ponce. That the value of the property involved in the above suit greatly exceeds the sum of five thousand dollars ($5000.00) exclusive of the costs of this suit.

(Signed) LUIS P. VALDIVIESO.

Subscribed and sworn to before me this 9th day of October, 1905.

(Signed) LUIS A. BECERRA, [SEAL.]
Notary Public.

In the Supreme Court of Porto Rico.

THE ROMAN CATHOLIC APOSTOLIC CHURCH IN PORTO RICO,
Plaintiff,
vs.
THE MUNICIPALITY OF PONCE, Defendant.

Bond.

Know all men by these presents, that we, the Municipality of Ponce, Porto Rico, a Municipal Corporation as principal, and Evangelio Auffant, and Juan Cintron, as sureties, are held and firmly bound unto La Iglesia Catolica, Apostolica Romana en Puerto Rico, in the full and just sum of One Thousand Dollars ($1,000.00) to be paid to the La Yglesia Catolica Apostolica Romana en Puerto Rico, its certain attorneys, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 11th day of July

A. D. in the year of our Lord one thousand nine hundred and six, and [illegible] Court of Porto Rico on the 23rd day of May, 1906, in a suit pending in said court, between the
29 La Yglesia Catolica Apostolica Romana en Puerto Rico, plaintiff, and the Ayuntamiento de Ponce P. R., defendant, a judgment was rendered against said Municipality of Ponce, and the said Municipality of Ponce having obtained an appeal and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said La Yglesia Catolica Apostolica Romana en Puerto Rico, citing and admonishing them to be and appear at a session of the Supreme Court of the United States to be holden at the city of Washington, District of Columbia.

Now, the condition of the above obligation is such that if the said Municipality of Ponce, shall prosecute its appeal to effect and answer all damages and costs if it fails to make good its plea, then the above obligation to be void; else to remain in full force and effect.

MUNICIPALITY OF PONCE,
PORTO RICO,
(Signed) By S. OPPENHEIMER, *Alcalde.*
(Signed) E. AUFFANT. [SEAL.]
(Signed) JUAN CINTRON. [SEAL.]

[Seal of the Municipality of Ponce, Porto Rico.]

Evangelio Auffont, and Juan Cintrón, each for himself, makes oath according to law, deposes and says: That he is a resident and freeholder within the Island of Porto Rico, that he is worth over the sum of one thousand dollars in visible property in Porto Rico, over and above all just debts and liabilities, exclusive — property exempt from execution.

(Signed) E. AUFFANT.
(Signed) JUAN CINTRON.

Subscribed and sworn to before me on this 11th day of July of the year of Our Lord one thousand nine hundred and six.

(Signed) CARLOS F. CHARDON,
[NOTARY PUBLIC SEAL.] *Notary Public.*

The foregoing bond approved.

(Signed) JOSÉ S. QUIÑONES, *Juez.*

30 In the Supreme Court of Porto Rico.

LA IGLESIA CATOLICA APOSTOLICA ROMANA EN PUERTO RICO,
Plaintiff,
vs.
EL AYUNTAMIENTO DE PONCE, Defendant.

To the Secretary:

You are requested to take a transcript of record to be filed in the Supreme Court of the United States, pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following and no other papers or exhibits, to wit:

1. Complaint,
2. Demurrer,
3. Order of the Supreme Court of Porto Rico Overruling Demurrer,
4. Application of Plaintiff for Judgment by Default,
5. Order of Supreme Court of P. R. granting the above,
6. Judgment of the Supreme Court of Porto Rico,
7. Assignment of Errors,
8. Petition for Appeal to Supreme Court of the U. S.,
9. Order of the Court allowing said appeal,
10. Notice of Appeal,
11. Affidavit,
12. Bond,
13. Citation.

Respectfully, HORTON & CORNWELL,
Attorneys for Appellant.

San Juan, P. R., 16th July, 1906.

31 I, C. R. Newton, English-Spanish Stenographer of the Supreme Court of Porto Rico, hereby certify: that the translations contained in the foregoing record are true and faithful translations of the original documents on file in the record herein, and that I have carefully read and compared the same with their respective originals.

C. R. NEWTON,
English-Spanish Stenographer, Supreme Court of P. R.

32 Supreme Court of Porto Rico, Office of the Secretary.

UNITED STATES OF AMERICA, *Supreme Court of Porto Rico, ss:*

I, Antonio F. Castro, Secretary of the Supreme Court of Porto Rico, do hereby certify: that all of the foregoing documents are found in, and form part of the record in a certain cause lately pending in said Supreme Court, wherein The Roman Catholic Apostolic Church in Porto Rico is Plaintiff, and the Municipality of Ponce is defendant; that of such documents, those whose originals have been

written in the English language are true and correct transcripts therefrom and of the whole thereof, and such documents as have been originally written in the Spanish language, have been truly and faithfully translated into the English language, according to the certificate of the English-Spanish Stenographer of this Court, which forms a part of this record; and that this record has been prepared in accordance with the præcipe filed by counsel for defendant and appellant.

In testimony whereof, I have hereunto set my hand and the Seal of said Supreme Court, at San Juan, Porto Rico, this fourth day of September in the year of Our Lord, One Thousand nine hundred and six.

[Seal Supreme Court of Porto Rico, United States of America.]

A. F. CASTRO,
Secretary of the Supreme Court of Porto Rico.

25-cent stamp, canceled.

33 In the Supreme Court of Porto Rico.

LA YGLESIA CATOLICA APOSTOLICA ROMANA EN PUERTO RICO,
Plaintiff,
vs.
EL AYUNTAMIENTO DE PONCE, Defendant.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to La Yglesia Católica Apostólica Romana en Puerto Rico, and Juan Hernandez Lopez, as attorney for the said Yglesia Católica Apostólica Romana en Puerto Rico, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at the City of Washington, District of Columbia, within thirty days (30), from the date of this writ, pursuant to an appeal, duly allowed by the Supreme Court of Porto Rico, and filed in the Clerk's office of said Court on the 28th day of May 1906 in a cause wherein, the Municipality of Ponce are appellants, and you appellee, to show cause, if any, why the judgment rendered against the said appellants as in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice, United States of America, this 16 day of July A. D. 1906, and of the independence of the United States One Hundred and Thirty.

JOSÉ S. QUIÑONES,
Chief Justice Supreme Court of Porto Rico.

[Seal Supreme Court of Porto Rico, United States of America.]

Attest:
A. F. CASTRO,
Secretary Supreme Court of Porto Rico.

Service of a copy of the within citation is hereby admitted this — day of —— A. D. 1906.

——— ———,
Attorney for Appellee.

34 UNITED STATES OF AMERICA, *Island of Porto Rico, ss:*

On the 19th day of July, 1906, I served the within citation upon Juan Hernandez Lopez, by handing a copy of the same to him at his law office on Allen Street, in the city and municipality of San Juan, Porto Rico.

H. M. HUTCHISON.

Subscribed and sworn to before me, this twentieth day of July, 1906.

[Seal Supreme Court of Porto Rico, United States of America.]

A. F. CASTRO,
Secretary of the Supreme Court.

Endorsed on cover: File No. 20,437. Porto Rico supreme court. Term No. 143. The Municipality of Ponce, appellant, *vs.* The Roman Catholic Apostolic Church in Porto Rico. Filed October 25th, 1906. File No. 20,437.